



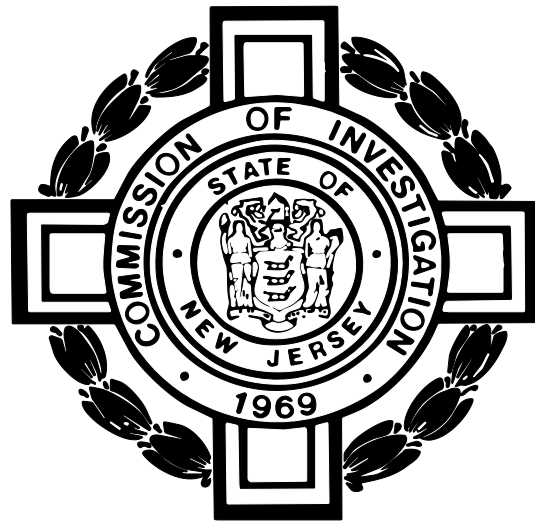
State of New Jersey
Commission of Investigation

GUARDING THE ASSETS

An Inquiry into the State Law Governing Healthcare Conversion Funds

March 2023

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Commission of Investigation



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THE
ASSETS

**An Inquiry into the State
Law Governing Healthcare
Conversion Funds**

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March 2023

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The President and Members of the Senate

The Speaker and Members of the General Assembly

The State Commission of Investigation, pursuant to N.J.S.A. 52:9M-1 to -20, herewith submits its final report of findings and recommendations stemming from an investigation into the Community Health Care Assets Protection Act (CHAPA) and charitable foundations created under the law.¹

Respectfully,

Handwritten signature of Tiffany Williams Brewer in cursive script.

Tiffany Williams Brewer
Chair

Handwritten signature of John P. Lacey in cursive script.

John P. Lacey
Commissioner

Handwritten signature of Kevin R. Reina in cursive script.

Kevin R. Reina
Commissioner

¹ Commissioner Robert J. Burzichelli was formally recused from this matter and did not participate in any aspect of the inquiry.

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Summary

The State Commission of Investigation (SCI or Commission) remains involved in a continuing examination of healthcare and hospital-related issues in New Jersey. In its latest inquiry, the Commission has identified a number of issues that the Governor and State legislators should be aware of regarding weaknesses and ambiguities in the Community Health Care Assets Protection Act (CHAPA), a law created, in part, to protect charitable assets and proceeds from the sale of nonprofit hospitals to for-profit operators in New Jersey.²

The inquiry revealed gaps and a lack of clarity in the statutory language that could lead to its manipulation and render it unable to fulfill the legal mandate to safeguard monies from nonprofit hospital sales and ensure the funds are irrevocably devoted to serving the healthcare needs of the community historically served by the facility. These concerns are based on the following findings:

- Despite its strong commitment to safeguard assets and proceeds, CHAPA fails to assign a specific and meaningful role for state government to provide ongoing oversight of the assets and to monitor charitable entities created with protected funds.
- CHAPA does not indicate if charitable trusts created under it are intended as temporary or permanent.
- The law provides only vague guidance on how assets are to be expended and contains no active mechanism to ensure monies are dedicated for appropriate charitable healthcare purposes.

As part of its inquiry, the Commission investigated a series of allegations concerning mismanagement and improper business practices at the Salem Health and Wellness Foundation (Foundation) – the first trust created under CHAPA – and whether it appropriately served the healthcare needs of Salem County residents. While the SCI’s investigation did not uncover violations of any law, it found the Foundation had engaged in certain questionable practices – including the transfer of more than \$52.5 million in assets – that appeared to be inconsistent with CHAPA’s statutory purpose. The SCI also examined the CHAPA-related obligations of the Health Care Foundation of the Oranges (HCFO), which received proceeds after the 2016 sale of the nonprofit East Orange General Hospital to a for-profit operator, and recently lost its federal tax-exempt status after failing to file tax forms for three consecutive years.

The State Legislature has amended CHAPA on multiple occasions, twice concerning the use of charitable assets in hospital acquisitions by nonprofit entities. Still, the Commission found ambiguities persist in the law that need clarification to make it more effective. The failure to clarify vague or unaddressed portions of the law puts assets legally earmarked for community

² N.J.S.A. 26:2H-7.11h.

healthcare at risk of being misused or wasted and could unnecessarily complicate future nonprofit hospital sales.

This inquiry is especially pertinent given that approximately 93 percent of the hospitals in New Jersey operate as nonprofits.³ Any proposed sale of those entities to a for-profit operator would require CHAPA review and, if charitable assets or sales proceeds remained, would prompt the creation of a charitable trust or the transfer of the funds into an existing charitable entity. Against this backdrop, the SCI urges the Legislature to review the findings and recommendations set forth in this report and to take action to clarify and strengthen CHAPA.

The Commission's recommendations include amending CHAPA to remove certain ambiguities and unaddressed matters within the law to make it more effective. Moreover, greater oversight authority should be vested with the agency entrusted to oversee the administration of the law. Finally, the Commission recommends reforms to address the administrative operation of the Salem Health and Wellness Foundation enabling it to better serve community healthcare interests as intended under CHAPA.

Background of CHAPA

CHAPA was enacted in 2000, two years after the first nonprofit hospital in New Jersey was converted to a for-profit venture.⁴ The statute requires a hospital owner to obtain state government approval before a for-profit entity may acquire a non-profit hospital. CHAPA outlines the steps state government must follow during the process. A key element is the application's review by the Office of the Attorney General in New Jersey, in consultation with the state Department of Health, to ensure the proposed transaction serves the "public interest."⁵ The law specifically requires the following:

The proposed acquisition shall not be considered to be in the public interest unless the Attorney General determines that appropriate steps have been taken to safeguard the value of the charitable assets of the hospital and to ensure that any proceeds from the proposed acquisition are irrevocably dedicated for appropriate charitable health care purposes; and the Commissioner of Health determines that the proposed transaction is not likely to result in the deterioration of the quality, availability, or accessibility of health care services in the affected communities.

As part of its review, the Attorney General's Office determines the dollar value of assets the nonprofit hospital shall set aside as a charitable obligation and place in a nonprofit charitable trust or transfer to one or more existing or newly established tax-exempt charitable organizations operating pursuant to federal tax rules. CHAPA specifies the purpose of any charitable entity that

³ According to the state Department of Health website, 70 acute care hospitals were operating in New Jersey in 2022. Of those facilities, 65 were not-for-profit entities.

⁴ In 1998, county-owned Bergen Regional Medical Center was placed under the control of a for-profit operator.

⁵ N.J.S.A. 26:2H-7.11b.

receives assets “shall be dedicated to serving the health care needs of the community historically served by the predecessor nonprofit hospital.”⁶ Once state government completes its review of the application, the state Superior Court must authorize the nonprofit hospital acquisition.

The governance of a charitable trust or any new charitable entity created with hospital assets is to be “broadly based” and subject to the review and approval of the Attorney General. The law requires the governing body of the charitable entity to have mechanisms in place to avoid conflicts of interest and to prohibit grants benefitting its board members, officers and individuals employed by the acquiring hospital. Under CHAPA, the governing body of the charitable entity must submit an annual report to the Attorney General, including an audited financial statement and a detailed description of its grant-making and charitable activities related to the use of its assets.

Salem Health and Wellness Foundation

The Salem Health and Wellness Foundation was formed in August 2002 with approximately \$32.2 million in net proceeds following the sale of the nonprofit Memorial Hospital of Salem County to Community Health Systems, Inc. (CHS), a publicly traded hospital system, which at the time owned 62 hospitals across 22 states.⁷ The Foundation was the first charitable trust created under CHAPA.

In its certificate of incorporation as a 501(c)(3) tax-exempt entity under the Internal Revenue Code, the Foundation’s purpose is to “make grants, provide financial assistance and engage in any and all other charitable health care purposes which supports, assists and develops the health and wellness of the residents of Salem County.” Among its specific goals were to expand access to healthcare services for underserved populations in Salem County, including the indigent and migrant workers; to establish nonprofit community groups that support health and wellness programs for individuals in Salem County; and to support efforts to promote the recruitment, education and retention of skilled health care professionals in the county.

The Foundation’s original Board of Trustees – comprised of nine members with staggered terms – was selected jointly by the board members of the Memorial Hospital of Salem County and its nonprofit parent company, the South Jersey Health Corporation. The trustee candidates were chosen by a seven-member Nominating Committee, comprised of three members appointed by the hospital and parent company boards and four from a list of eleven Salem County-based community organizations. Emphasis was placed on finding trustee nominees that were representative of the community and had received the endorsement of local community groups. The initial incorporation procedures required the Nominating Committee to seek nominations for one trustee candidate each from a list of 11 community organizations, as well as any other community organizations the panel deemed appropriate for identifying suitable

⁶ N.J.S.A. 26:2H-7.11h.

⁷ The Foundation initially received \$14.6 million in funding in 2002. It later received \$10 million from an escrow account and was eligible to receive another \$7.6 million net of any outstanding liabilities.

nominees. In addition, a notice was to be published in at least one local newspaper inviting the public to apply for the trustee posts.

The criteria set for board membership required nominees to possess a mixture of mission-related and other professional skills and knowledge needed by the organization, including healthcare delivery, community healthcare needs, financial management, fundraising and communications. It also required trustee nominees to have knowledge and experience with local community groups in Salem County, to encompass a broad age spectrum and be sufficiently diverse and reflective of the minority groups in the county. Nominees needed the willingness to participate in strategic planning and financial oversight, and a desire to leverage rather than replace government or other charitable dollars.

The Foundation's bylaws set forth the procedures for electing a Chair and other officers, and listed the trustees' duties and terms. The bylaws also established a Conflicts of Interest Policy, requiring trustees and Foundation employees to disclose any potential conflicts "both financial and non-financial" each year. In addition to the Nominating Committee, the bylaws formed four other standing committees: Executive, Finance and Investment, Grant-making and Fundraising. The board was empowered to appoint an Executive Director to oversee the day-to-day operation of the Foundation.

The trustees selected Thomas McGoff, who most recently had been the Interim Assistant CEO of Memorial Hospital of Salem County, to serve as the Foundation's first Executive Director. A longtime healthcare executive, McGoff had extensive experience in New Jersey-based, regional and national health-related matters. Former board members told the Commission McGoff established solid managerial practices and grant-making policies at the Foundation and organized retreats instructing the trustees on how to dispense charitable funds properly. Charter board member Sister Carol Adams, who served as its chairperson from 2002 to 2010, testified that the system McGoff established had board members review every grant application and offer input regarding any potential award. Applicants were required to provide a specific reason for the grant request and show how they would sustain the program after the grant expired. The Foundation would also follow up to see the effectiveness of grants awarded to the program.

In April 2007, McGoff died after a brief illness. According to former board members, shortly before his death McGoff requested that the Foundation's office manager Brenda Goins be named as his successor. Goins, a former head clerk at a local office of the New Jersey Motor Vehicle Commission and a medical office manager, had worked at the Foundation since its creation.⁸ She had far less management experience than McGoff. After serving as the organization's interim leader for several months, the board approved Goins' appointment as Executive Director in November 2007. Goins served as the Foundation's leader from that time until her retirement on Sept. 30, 2022. In October, Paul DiLorenzo, who has had a 40-year managerial career in child welfare and human services, was named the new Executive Director.

⁸ Goins worked in fundraising at the Christiana Care Foundation Office in Delaware. As the office manager for the home care and hospice units at Memorial Hospital of Salem County, she handled medical records, payroll and billings.

Since its formation two decades ago, the Foundation has funded more than \$58 million in health-related initiatives through grants, contributions and scholarships to nonprofit entities operating within Salem County, one of the state's least populated and poorest regions.⁹ Located in the southwest corner of New Jersey, it is bordered by Gloucester and Cumberland counties and linked to the neighboring state of Delaware by the Delaware Memorial Bridge. Known as a “health care desert,” due to the shortage of medical providers in the region, Salem County remains consistently ranked at the bottom in studies measuring positive health outcomes for residents.¹⁰

The Battle Over the Foundation’s CHAPA Assets

Opposing viewpoints on the most appropriate use of the Foundation’s assets to support community healthcare needs – fueled in part by ambiguous language in CHAPA – led to a longstanding dispute in Salem County between the charitable entity’s leadership and some South Jersey political leaders.

By the early 2010s, the Memorial Hospital of Salem County was struggling. It had downsized its workforce and reduced some healthcare services – including shuttering the maternity ward in 2014. Local elected officials raised concerns in media accounts that diminished services would harm citizens and later warned a sale or closure of the hospital was looming.

Discussions concerning use of the Foundation’s assets to assist a nonprofit hospital in acquiring the Salem hospital took place as early as December 2010, according to a review of the board’s Executive Session and regular meeting minutes. At the time, the Fenwick Corporation, the entity overseeing the initial asset purchase agreement between Community Health System (CHS) and Memorial Hospital and administering a \$10 million escrow account, was approaching the end of its 10-year oversight term. Fenwick, another healthcare management firm and the Foundation’s legal counsel proposed that the Foundation consider a partnership with a nonprofit hospital system to acquire Memorial Hospital. The proposal required each partner to provide 50 percent of the funds toward the purchase, with the hospital system providing ongoing operating expenses and assuming all liabilities. For its part, the Foundation would share in the hospital's governance but would have no role in its day-to-day operation. After voting in support of the proposal, the board organized a committee to explore the bid’s viability. The board’s meeting minutes from spring 2011 indicated it had drafted an agreement with a nonprofit hospital partner identified as Cooper Health System. However, according to the minutes, the deal fell apart that summer after the board rejected a request from Cooper asking for more (financial) concessions from CHS and “possibly the Foundation.”

While the Foundation had the right of first refusal to purchase the hospital, it had no legal obligation under CHAPA in 2011 to contribute funds toward the acquisition of the hospital by

⁹ The total expenditures include grant-matching programs as well as grants provided to Salem Medical Center in 2019 and 2020.

¹⁰ A nationwide study by the University of Wisconsin Population Health Institute and the Robert Wood Johnson Foundation is available at www.countyhealthrankings.org.

another entity. Instead, at that time, CHAPA contained only the vague statutory language requiring the funds to remain “irrevocably dedicated for appropriate charitable health care purposes.” However, in 2014, an amendment introduced in the New Jersey General Assembly would change that by giving a successor nonprofit hospital acquiring a for-profit hospital the ability to claim the assets.¹¹ To obtain the assets, the Superior Court, with input from the Attorney General, first needs to determine whether allocating the assets to the acquiring entity would be more consistent with the original nonprofit hospital’s purpose. At the time, the Salem Foundation was the only existing hospital conversion foundation created under the law to which the amendment would apply.

The proposed amendment to CHAPA prompted a bold response from the Foundation. Two months after the amendment’s filing, the Foundation’s board authorized the August 2014 transfer of the bulk of its funds – more than \$52.5 million – to the Community Foundation of New Jersey (CFNJ). According to its 2014 annual report, filed with the Attorney General’s Office, the Foundation had “granted” the funds to CFNJ in order to establish a special purpose fund: the Salem Health and Wellness Foundation Fund.¹² In the report, then-Executive Director Brenda Goins wrote, “Through the Fund, for which the Foundation will make grant and investment recommendations, the Foundation will be able to further its mission, and at the same time, take advantage of the CFNJ’s overall history and experience, expertise in grant-making and economies of scale.”

When asked by SCI counsel during sworn testimony about the action, which required no advanced notification to, or approval by, the Attorney General or any other state government entity, Goins testified the assets were transferred “to protect the funds.”¹³

Both houses of the Legislature approved the CHAPA amendment enabling an acquiring hospital to obtain charitable assets in November 2014. Weeks later, Gov. Chris Christie conditionally vetoed the bill, amending it further to permit the reclaiming of CHAPA assets transferred to a donor-advised fund or any other entity. The measure became law in December 2014.

For nearly four years, the CFNJ oversaw the Foundation’s assets, investments and grant-making activities. Under the arrangement, the Foundation solicited the grant proposals, and its board approved the grants, according to CFNJ President Hans Dekker. He said the CFNJ did not contradict or revoke any grant decisions, and its primary duty was to verify the grantees were tax-exempt 501(c)(3) charities. Dekker told the Commission that Foundation representatives

¹¹ Bill A3423 was sponsored by Assemblyman John Burzichelli, D-Salem, Assemblywoman Celeste Riley, D-Cumberland and Assemblywoman Bonnie Watson Coleman, D-Mercer. The companion bill S2510 was sponsored by Sen. Stephen Sweeney, D-Gloucester, and Sen. Diane Allen, R-Burlington.

¹² The CFNJ is a Morristown-based organization that manages more than 1,000 funds and handles grant-making and investments for charitable entities across the state.

¹³ Goins testified the transfer was also to maintain the Foundation’s public charity status, which provided it with certain federal tax benefits.

never visited the CFNJ's Morristown offices and that he mainly communicated with Goins via email.

The Foundation paid a total of \$297,850 in management fees – .15% of the assets it held for the organization – to CFNJ between 2014 and 2018. Other than fees and grants, Dekker said the CFNJ paid some legal expenses on behalf of the Foundation. During the years the CFNJ managed the Foundation's funds, more than \$5 million in grants were awarded to Salem County-based recipients.¹⁴

The CFNJ ended its arrangement with the Foundation in March 2018, when it returned \$55.8 million in assets to the Salem charitable organization.¹⁵ Dekker said that state and local politicians were pressuring the CFNJ to ensure the Salem hospital's pending sale to Inspira Health System was not hampered by a failure to provide most or all of the Foundation funds to the new buyer. He said that the CFNJ had three choices: give the money to Inspira, keep the funds, or return the money to the Foundation.

Despite the push from political leaders, the Inspira bid never came to fruition. However, another potential buyer, Community Healthcare Associates (CHA), an Essex County-based company, filed paperwork to acquire the hospital in May 2018. In addition to purchasing the hospital, CHA wanted to implement facility upgrades, equipment purchases and other capital improvements.

Instead of petitioning the courts to obtain the funds, CHA principals entered into a financial arrangement with the Foundation, assuring the trustees and its leadership that it wanted to secure only some of the entity's charitable assets to complete the hospital purchase. Goins testified the CHA plan enabled the hospital to remain open and expand its services and capacity while also permitting the Foundation to continue operating. To support CHA's acquisition, the Foundation agreed to provide CHA with \$29 million – a \$14.5 million grant and a \$14.5 million loan. CHA's purchase of Salem Medical Center was finalized in February 2019.

The hospital changed ownership yet again in December 2022 after Inspira, which owns hospitals in Elmer, Mullica Hill and Vineland, acquired the hospital building, the ambulatory surgery center and physician offices.¹⁶ As part of the transaction between the hospital and Inspira, the Foundation agreed to modify its loan with Salem Medical Center, forgiving a portion of its total indebtedness. A provision in the loan modification agreement also provided that Inspira would not seek additional funding from the Foundation.

Although the Salem hospital survived and the Foundation was able to preserve itself and its assets, it did not come without cost. From 2014 to 2018, the Foundation spent more than \$519,000 in legal and lobbyist fees, including efforts to oppose the proposed amendments to CHAPA and trying to convince lawmakers to reconsider taking most or all of its assets to fund the

¹⁴ Dekker advised the Foundation submitted an annual report to the Attorney General indicating the grants the CFNJ made on its behalf between 2014 and 2018.

¹⁵ Goins testified the assets grew due to favorable investment returns.

¹⁶ The New Jersey Budget Oversight Committee appropriated \$25 million to Inspira in connection with the acquisition.

acquisition of the Salem hospital.¹⁷ It also paid nearly \$300,000 in management fees to CFNJ. Those were monies that could have fulfilled community healthcare needs in Salem County. Further, despite the amendments made to CHAPA, the law still lacks clarity concerning the operation of charitable entities created from assets or hospital sale proceeds.¹⁸ Specifically, it fails to address whether trusts are temporary or permanent and what portion of their funds may legally be obtained by a nonprofit acquiring hospital.

A Review of Foundation Operations

The Commission's review of administrative and grant-making practices at the Foundation identified no specific wrongdoing; nonetheless, it uncovered inefficiencies and laxity in particular areas and found the Foundation did not always adhere to its own internal standards and best industry practices in certain matters.

- **Grant-making Practices**

An SCI analysis of the Foundation's expenses over the last 18 years found its grants and operating costs varied widely from year to year, with the entity often failing to meet its self-imposed standards for annual charitable payouts.

Until 2019, the Foundation operated as a public charity. State and federal laws impose no minimum spending mandates on public charities, enabling the Foundation to set its own standards. It sought to spend approximately three to four percent of its total unrestricted net assets annually on operating expenses and grants, according to testimony from its former board Chairman.¹⁹ The rate is consistent with best industry practices for public charities, which typically allocate between four and five percent for grants and operating costs.

The Commission's examination found significant fluctuation in the Foundation's payout rates, particularly in its initial years. It dipped well below the three to four percent range between 2010 and 2014, with some years dropping to less than two percent. It was more consistent and closer to reaching its self-imposed goal when the CFNJ managed the assets between 2015 and 2018.²⁰ Year-to-year fluctuations are less worrisome than a steady pattern of failing to meet the payout standard, according to guidance from national leadership groups in the nonprofit sector. In some years, such as 2008, when the organization gave out more than \$4.3 million in grants, the rate spiked to more than 12 percent before dipping significantly in subsequent years.

¹⁷ The amount includes fees the Community Foundation of New Jersey paid when it managed the Foundation's assets.

¹⁸ CHAPA was amended again in 2018 to allow any charitable assets provided to a charitable trust to be allocated to a nonprofit charitable entity that would be establishing and operating an equivalent nonprofit hospital. The previous language enabled assets only to be provided to a nonprofit hospital acquiring the for-profit hospital.

¹⁹ William McAllister joined the board in 2015. He was selected as Vice Chairman in 2016 and served as Chairman from 2018 until 2021.

²⁰ CFNJ President Dekker advised that the industry standard is five percent. During the years the CFNJ managed the Foundation's funds, they kept the allocation well below that percentage so the funds would grow.

Starting in 2019, the Foundation filed federal tax forms as a private foundation and it must now pay out qualifying distributions of at least five percent of the value of its endowment annually or face a financial penalty.²¹ The Commission's review found the Foundation met the five percent threshold in 2019 and 2020 after providing \$14.5 million in grants to assist CHA in acquiring Salem Medical Center.

Former Executive Director Goins told the Commission the Foundation funded nearly every appropriate grant request it received that fit its mission. The number of grants awarded annually varied from four in 2021 to a high of 41 in 2017. According to Goins, the Foundation scaled back some of its giving soon after its total assets decreased following grants and loans provided to Salem Medical Center in 2019 and 2020.

The Commission also investigated allegations about questionable grant-making practices at the Foundation, including claims that Goins controlled grant decisions, that the process of making awards was often arbitrary, and that similar funding requests were granted to certain entities but not others. The inquiry uncovered no evidence indicating improprieties in awarding grants; however, there were instances where seemingly similar requests resulted in awards to one applicant but not another.

Goins testified that she effectively served as the screener for grant applicants, taking initial information regarding requests, including phone calls, and deciding if it warranted sending it along to the Grant-making Committee for further consideration.²² Goins told the Commission she did not recall if all of these calls were documented. Only grant applications that were approved by the committee were forwarded to the Board of Trustees. The board authorized all grant-making decisions made by the Foundation.

- **Selection Process for Board Members**

Over the years, the Foundation relaxed its process for selecting new board members. In documents creating operational standards for the Foundation, rigorous procedures were set for choosing the initial trustees, including requiring nominees to have a professional background in fields applicable to the Foundation's grant-making activities, to represent diverse backgrounds and to possess strong ties to the community. It also sought input from community stakeholders to nominate trustee candidates.

More recently, the Foundation stopped soliciting nominations for trustee candidates through public notices in the newspaper after a local publication closed. It also stopped sending letters to community organizations seeking input on candidates. Witnesses told the Commission that the process for finding new board candidates subsequently became mostly based on word of mouth.

²¹ Federal tax rules require private foundations to distribute at least five percent of the entity's "distributable amount" of its assets annually for charitable purposes. The distributable amount is equal to the foundation's minimum investment return with certain adjustments. The failure to distribute the amount results in a 30-percent tax penalty on the undistributed income.

²² Goins testified she sometimes advised callers who inquired about grants that they did not qualify for funding. The disqualifications included requests for programs outside Salem County or beyond the scope of its grant making.

Internal changes concerning the process also became more lax. In 2010, the board phased out the Nominating Committee and created a Governance Committee to select new trustees. However, the Nominating Committee only met once annually in 2017, 2018 and 2019, based on documents provided to the SCI.

- **Auditing Process**

The Commission found the Foundation has used the same accountant since its formation in 2002. A review of the 2007 Audit Committee minutes indicated members agreed that its accountant, sole practitioner Edward Gheysens, Jr., CPA, would be retained for a period not to exceed three years. Records reviewed by the Commission included an October 2007 Foundation letter sent to Gheysens stating the not to exceed three-year term. More than 15 years later, Gheysens still serves as the organization's accountant.

The Healthcare Foundation of the Oranges

In 2016, nonprofit East Orange General Hospital Inc. was sold to for-profit operator Prospect Medical. As it was with the Salem County hospital facility acquisition, the sale triggered the CHAPA provision requiring the protection and dedication of charitable assets for healthcare purposes.

The Commission's investigation found the Healthcare Foundation of the Oranges (HCFO) has faced challenges getting its administrative operations up and running, to meet financial and administrative reporting requirements under CHAPA, and preserve its federal tax-exempt status. The HCFO communicated those difficulties to the Attorney General in its annual report submissions, some of which were provided years after the reporting period.

Unlike the Salem Foundation – a new charitable entity created with assets from a hospital sale – the funds from the East Orange hospital acquisition were deposited into an already existing foundation. Then known as the East Orange General Hospital Foundation, it was created in 1990 to support the nonprofit hospital. As a condition of state government's approval of the hospital sale under CHAPA, Prospect, the new for-profit purchaser, was required to provide a portion of the sales proceeds to the East Orange General Hospital Foundation.

The SCI's review of the East Orange General Hospital Foundation's 2016 Form 990 indicated that Prospect provided \$6.3 million to the organization. Following Prospect's acquisition of the hospital, ties were severed between the prior owner of the hospital and the East Orange General Hospital Foundation. It was later renamed the Healthcare Foundation of the Oranges.²³

From the start, the Essex County-based foundation faced "various operational hurdles," according to its 2016 annual report submitted to the Attorney General in October 2017. Those challenges included difficulty accessing office space, and hiring staff and professional consultants

²³ HCFO's mission is to promote healthcare awareness, education and funding within East Orange, Orange, Irvington, and the South and West Wards of Newark.

to help it operate as an independent entity no longer reliant on the resources of a nonprofit affiliate hospital. HCFO also had trouble dealing with Prospect and getting it to comply with specific terms of the asset purchase agreement.

Although it later launched community healthcare programming – including health screenings, evaluations and other services – the HCFO has been lax in certain administrative tasks, including filing federal tax forms and meeting reporting requirements under CHAPA. The IRS.gov website indicated it revoked the organization's nonprofit status in 2022 for failing to file federal tax forms for three consecutive years starting in 2019. The HCFO also failed to file annual reports required under CHAPA in multiple successive years.²⁴

The HCFO halted its grant-making activity during the COVID-19 pandemic but remained engaged in the community by hosting various events. Since its creation, it has given out four grants totaling \$205,000. It still holds more than \$5.7 million in assets.²⁵

Recommendations

The recommendations crafted in response to the Commission's findings call for reforms that fall into three main areas: measures to strengthen the efficacy of CHAPA, those to fortify the legally-required state government oversight of CHAPA funds and improvements to better manage the operations of the Salem Foundation. The recommendations are presented in greater detail below:

Revisions to the Community Health Care Assets Protection Act

The Commission recommends amending CHAPA to clarify certain ambiguities identified during the course of this investigation, including the organizational lifespan and operational parameters dictating the conduct of charitable trusts created under the law.

- **Clarify the Duration of Charitable Entity's Lifespan**

The law should provide more guidance on whether a charitable entity created with CHAPA assets is temporary or permanent. In the case of the Salem Foundation, its leadership believed it should exist in perpetuity and acted accordingly, as evidenced by its self-preservation efforts. However, the law does not explicitly address the issue of permanency, leaving the status of charitable entities created under it unclear.

- **Determine the Charitable Entity's Financial Obligation to Successor Nonprofit Hospital**

Despite amending the law to enable a successor nonprofit hospital to obtain the charitable assets from a prior sale, CHAPA still fails to determine whether the acquirer is eligible

²⁴ In November 2020, after the Attorney General's Office contacted the HCFO regarding its failure to file the reports, the organization submitted annual reports for 2018, 2019 and 2020.

²⁵ HCFO suspended its grant-making activities in 2020 in response to the COVID-19 pandemic. It intends to reinstate a grant cycle in June 2023, according to a 2021-2022 "status update" filed with the Attorney General's Office in January 2023.

to apply only for the original assets or those assets plus any monies that have grown because of investments. Any changes regarding this provision should address whether a charitable organization can ever fulfill its financial obligation to a purchasing not-for-profit hospital – including circumstances where the funds were provided voluntarily – or if the charitable entity’s responsibility exists in perpetuity.

Strengthening State Government Oversight and Regulation of CHAPA

State government has limited oversight of charitable entities created through CHAPA beyond assisting in their initial start-up, making recommendations to the court when appropriate and reviewing its annual report. Considering the importance CHAPA places on safeguarding assets and proceeds from nonprofit hospital sales, it should extend the government’s oversight responsibility to ensure the appropriate expenditure of the funds.

- **Establish Additional Reporting Requirements**

Currently, the primary method for state government to oversee operations of charitable entities funded with CHAPA assets is through the organization’s submission of an annual report to the Attorney General. The Commission recommends the creation of an expanded reporting mechanism to ensure CHAPA funds are appropriately designated and consistently utilized to provide community healthcare needs.

- **Draft and Adopt Regulations for Administering CHAPA**

The Attorney General’s Office should draft regulations to assist with the effectuation of its oversight obligations as required under N.J.S.A. 26:2H-7.11n. Among these regulations, the state should consider reviewing the annual payout amounts to ensure consistency over time in annual grant awards by a foundation.

Bolstering Governance Practices at the Salem Health and Wellness Foundation

Given that the Foundation is under new leadership and has already taken steps to bolster its internal operations, including hiring new staff, the Commission intends its recommendations regarding managing the organization’s daily affairs as instructive as the organization moves forward. The recommendations include mechanisms to promote greater accountability and transparency applicable to other charitable entities established under the law.

- **Enlist Community Partners in Recruitment of Board Members**

When the Foundation was created in 2002, it had stringent requirements for selecting its initial slate of trustees. However, over time, it has relaxed or ended some practices that enabled the board to identify a diverse pool of trustee candidates.

The Commission recommends the Foundation’s leadership escalate its efforts to ensure its board membership has individuals with diverse and varied backgrounds and skill sets. To

achieve this goal, it should actively seek input from community stakeholders in finding potential candidates. The Salem County-based community organizations like those that were instrumental in helping build the original board should be utilized as a valuable resource in this endeavor.

- **Establish Additional Controls for Grant Making**

The Foundation's former Executive Director told the Commission she sometimes received phone calls from potential grant applicants. She occasionally advised callers that their requests were inappropriate for various reasons, including when the appeals did not fit the Foundation's mission or were not within its geographic coverage area. She could not recall if all of the phone exchanges were documented.

To ensure there are no arbitrary, uneven or unfair advisements concerning grant-making decisions, the Foundation should establish consistent, transparent and predictable procedures for handling grant-making inquiries received by telephone and to address any potential conflicts of interest that may arise.

- **Regularly Rotate Accountant/Auditor**

The Commission recommends the Foundation establish and adhere to a written policy requiring it to rotate accounting firms, or if applicable, a practitioner with the firm, every three to five years. This policy would be consistent with best practices from the National Council of Nonprofits, a national leadership group in the nonprofit sector.

- **Increase Transparency by Posting Annual Reports Online**

Under CHAPA, the Foundation is required to make its annual reports available to the public. To meet this obligation, and to promote greater transparency of its activities and use of CHAPA funds, the Foundation should post its annual reports on its website.

APPENDIX

N.J.S.A. 52:9M-12.2 provides that:

- a. The Commission shall make a good faith effort to notify any person whose conduct it intends to criticize in a proposed report.*
- b. The notice required under subsection a. of this section shall describe the general nature and the context of the criticism, but need not include any portion of the proposed report or any testimony or evidence upon which the report is based.*
- c. Any person receiving notice under subsection a. of this section shall have 15 days to submit a response, signed by that person under oath or affirmation. Thereafter the Commission shall consider the response and shall include the response in the report together with any relevant evidence submitted by that person; except that the Commission may redact from the response any discussion or reference to a person who has not received notice under subsection a. of this section.*
- d. Nothing in this section shall be construed to prevent the Commission from granting such further rights and privileges, as it may determine, to any person whose conduct it intends to criticize in a proposed report.*
- e. Notwithstanding the provisions of R.S. 1:1-2, nothing in this section shall be deemed to apply to any entity other than a natural person.*

The following material was submitted pursuant to those statutory requirements.

Brenda Goins
627 Salem Quinton Road
Salem, New Jersey 08079

March 17, 2023

Kaitlyn Compari, Esq.
Counsel
New Jersey State Commission of Investigation
50 West State Street, 14th Floor
P.O. Box 045
Trenton, New Jersey 08625
Email: kcompari@sci.state.nj.us

Re: Notice of Proposed Report
Dissemination Number 23-02-003

Dear Ms. Compari:

Thank you for the opportunity to comment on portions of the proposed Commission Report (the "Proposed Report") related to the Salem Health and Wellness Foundation (the "Foundation"). Before I address the specific comments in the Proposed Report, I must first say that I am proud of the work that the Foundation has done since it was formed. Over \$58 million in grants were awarded over the life of the Foundation. We have served Salem proudly and helped to reduce childhood obesity, teenage pregnancy, assured necessary transportation for health services throughout the County and saved Salem Medical Center. I would hope that the Proposed Report would detail all of the wonderful results the Foundation has achieved in the community and include what our grantees and benefactors feel about us. I fear the Commission has been wrongly influenced by a vocal minority that do not have the best interest of Salem County in mind. I have lived in Salem County my entire life. I know firsthand how the Foundation has changed lives. If the Commission took the time to speak to all the people who have been impacted by the Foundation, it would see that there are no concerns about its service to the County and that the community assets are well protected and distributed thoughtfully.

Summary

I am at a disadvantage on the summary findings because you did not provide the complete Proposed Report. The finding that there are gaps and a lack of clarity in the CHAPA statute are not supported by the statute and represent a fundamental lack of understanding of CHAPA and charitable assets.

The Foundation was created when the Memorial Hospital of Salem County ("Salem Memorial") was sold to the for-profit operator known as Community Health Systems in 2002.

The sales price was \$35 million.¹ The Attorney General's Office was required under CHAPA to complete an exhaustive review of the sale and to make recommendations to the Court on how to protect the charitable assets. The Order of the Superior Court required the creation of the Foundation and its mission was expressly approved by the Court and Attorney General's Office. The Foundation was also subject to monitoring by the Attorney General's Office in addition to all of the laws in existence in New Jersey that govern charitable organizations. CHAPA specifically provides:

The governance of the charitable trust that results from the acquisition or of any newly established charitable organization that is to receive charitable assets pursuant to subsection g. of this section shall be subject to review and approval by the Attorney General.

In 2002, CHAPA did provide that the charitable assets transferred to the Foundation would be permanent. The amendment in 2014 attempted to change that but it is plainly clear that the Foundation was to manage and protect the funds from the sale of the hospital in perpetuity. CHAPA also directs the Attorney General to make recommendations on the best use and protection of charitable assets. That is exactly what occurred in 2002. I understand that the Attorney General's Office has reviewed dozens and dozens of CHAPA applications since the sale of Salem Memorial. Each review ends with a lengthy recommendation to the Superior Court that provides recommendations of the proposed sale of a not-for-profit hospital. CHAPA has been a model statute for other states to follow. There were no criticisms of its effectiveness until this Foundation was unfairly targeted (which I will discuss below).

Your conclusions assume that current New Jersey laws, outside of CHAPA, are insufficient to guard charitable assets. That is simply not true and ignores all of the law, policies, procedures and governance New Jersey and the Internal Revenue Service requires of all charitable organizations. They also fail to explain why the express mandate under CHAPA that the Attorney General shall monitor the Foundation is ineffective. Perhaps the Proposed Report has more details about how these conclusions were reached. I would hope though that significant input was requested from the Attorney General's Office given that it not only serves the most vital role in CHAPA but is also required under the law to protect charitable assets in general and is specifically empowered under CHAPA to monitor the Foundation.

The Foundation is not only guided by CHAPA and the judgment of the Superior Court which created it. It must follow the laws that govern all charitable organizations with the added guardrails imposed by CHAPA. Your summary fails to see CHAPA as added protection and instead views it as the only statute that governs the Foundation.

Battle over the Foundation's CHAPA Assets

This section of the Proposed Report fails to provide the reader with important context as to what was occurring prior to the Foundation granting funds to the Community Foundation of New Jersey ("CFNJ"). The Foundation understood in 2012 that the hospital then owned by

¹ As noted above, the Foundation has made grants in excess of \$58 million since its inception. It still manages over \$20 million in assets. This was all accomplished with the initial \$35 million in funding from the sale in 2002.

Community Health Systems was struggling financially. The Foundation was ready to make itself available to a not-for-profit hospital system to assist with acquiring the hospital. With the help of local elected officials, the Foundation was introduced to a large hospital system in Camden County. Over the course of 12 months, that Camden hospital negotiated to purchase Salem Memorial. We were told the purchase price would be \$40 million. The Foundation was asked to make a grant for half of the purchase price. It agreed. The Foundation was then asked to provide an open line of credit above the \$20 million. The Foundation asked for details about the line and how much would be needed. The Camden hospital simply told us to make all Foundation assets available.

The Foundation asked for assurances that Salem Memorial would remain open, that none of the Foundation funds would leave Salem County, why more than the purchase price was necessary to acquire the hospital and whether \$40 million represented fair market value for Salem Memorial. The only response the Foundation received was that all of its assets were needed. The Foundation voted against that request but continued to let the Camden hospital and the elected officials know that it would make \$20 million available and would have continued discussions about additional funding.

There was no further communication with the Foundation. By happenstance, the Foundation learned that legislation was introduced to amend CHAPA to take away all of the Foundation's assets. There was no other foundation the law could have possibly affected. There was also no discussion with the elected officials about why more than \$60 million was necessary for the Camden hospital to buy Salem Memorial or what would be done with those funds. There was also no concern about the residents of Salem County and how losing the Foundation would impact care. It was simply turn over everything or we'll change the law to try and take it from you.

To protect Salem County and the dozens of charities that rely on the Foundation, we made a decision to create a donor advised fund with CFNJ. As was erroneously repeated constantly over the years, no money left Salem County. The donor advised fund had the same mandate as the Foundation. The Foundation controlled all gift giving and all investing. Nothing changed once the funds were transferred except there was now an added layer of protection for the funds. The Proposed Report leaves out these critical details and provides no criticism of the behavior of local politicians that lead to the CHAPA amendment.

The Foundation informed the Attorney General's Office about the transfer on at least two occasions. The Attorney General had no objection to the transfer. In response to pressure from elected officials about the transfer, the Attorney General asked the Foundation and CFNJ to agree not to transfer more than 7% of the corpus of the funds unless notice was given to the Attorney General prior to any such transfer. We happily accepted the restriction. This is yet another example of how CHAPA actually worked and was effective. The Attorney General had the exclusive jurisdiction to monitor the Foundation and the funds and did just that.

Unlike local officials, the Foundation continued efforts to identify a not-for-profit buyer for Salem Memorial. In 2015, it identified Prime Healthcare, a billion-dollar healthcare system in California, that was acquiring hospitals in New Jersey. The Foundation negotiated a \$10 million

grant with Prime's not-for-profit foundation to acquire Salem Memorial. Prime navigated the approval process to acquire Salem Memorial but in what can only be described as intervention from elected officials, the Department of Health conditioned the acquisition on Prime having to file an action to acquire all of the Foundation's assets. The Department of Health did not have the jurisdiction to make that a condition and Prime went on record saying it did not need the rest of the Foundation's assets. Prime soon thereafter withdrew from the purchase because it did not want to operate a hospital in that kind of politically charged environment.

The Foundation was not deterred and continued to search for potential buyers. Given Prime's experience, it was becoming more difficult to locate a buyer. The Foundation met with a number of potential buyers. Ultimately, Community Healthcare Associates ("CHA") made the best proposal to acquire Salem Memorial. It provided detailed plans and projections of what would be needed to stabilize Salem Memorial and how Foundation funds would be used. CHA also agreed to keep Salem Memorial open and expend behavioral health and addiction treatment services. CHA was clear with the Department of Health and the State that the Foundation's existence was critical for providing care in Salem County. Without its presence and ability to make grants, too many health programs would go unfunded and the health problems in Salem County would become worse. The Foundation agreed to initially provide CHA with a \$14.5 million grant and a \$14.5 million loan. The Foundation also agreed to consider future grant proposals if Salem Memorial needed funds to remain open and to grow. In fact, the Foundation provided \$10 million more in funding after CHA acquired Salem Memorial.

The Foundation always understood that CHA would look to either partner with or sell the Hospital to a larger New Jersey based healthcare system. In 2021, CHA approached the Foundation and explained it was in discussions with a number of hospital systems to sell Salem Memorial. After months of negotiations and proposals, CHA informed the Foundation that Inspira was the successful bidder. In order for Inspira to agree to acquire Salem Memorial, it requested that the Foundation convert substantially all of the loan balance owed by CHA to a grant. After several meetings and due diligence requests, the Foundation voted to convert most of the loan balance to a grant. The sale to Inspira closed in January 2023.

I provide this background as proof that the CHAPA statute worked. The Foundation was created with a very specific purpose and intent. It is monitored and reports to the Attorney General. It is also guided by the charitable laws of New Jersey and operates mindful of its missions and duties. Without the Foundation, there would be no community voice for Salem County, its residents and the funds that it protects. Your Proposed Report fails to detail any of these facts and the results of the Foundation's work. It assumes, without any support, that CHAPA fails to assign a meaningful role for state government to provide oversight of the assets. Not only is there a specific role for the Attorney General, that role has proven effective and the Foundation has exercised its duties with the upmost care and respect for its mission. The Foundation saved Salem Memorial. It also saved more than \$20 million that will be used for the health and wellness of the residents of Salem County.

Finally, the fees noted in the Proposed Report were not spent only fighting against the State. As detailed above, the Foundation spent years identifying buyers for Salem Memorial. I certainly recognize that fees were incurred for dealing with the CHAPA amendment and the

threats from the State but it is only fair for the Commission to include that professionals were retained to help save Salem Memorial.

Grant-making Practices

The Proposed Report concludes that there is no evidence of impropriety in the Foundation's grant-making process. It, however, then goes on to insinuate that I somehow controlled the grant-making process and that "seemingly similar requests resulted in awards to one applicant but not another." This last remark should be deleted. Its only purpose is to make a reader conclude that there was bias in the grant-making process. There are no details about which grants were denied or why. Unless the Commission can share the grants that were denied and allow me to respond, that last comment is unfair. Grant requests on their face may seem similar in nature but due diligence will reveal whether that is in fact true. An organization's makeup, financial stability, mission and vision are all part of the Foundation's due diligence in determining a viable grant request. An organization must show it has the capacity to maintain the program after the grant funds are awarded. All of those factors are considered when awarding grants.

The grant-making process remained substantially similar during my time as Director. We held pre-application meetings with all not-for-profit organizations seeking funding. The grant-making committee attended these meetings. Members of the grant-making committee then decided if the organization should submit a full application. The only time a grant inquiry was not presented to the grant-making committee was when it did not qualify under the Foundation's mission.

The grant-making committee would then recommend grant applications to the full Board of Trustees for final decision. The Proposed Report leaves out these crucial details about the process and leaves the reader with the impression that I alone controlled grant-making decisions. I would ask that the complete explanation of the grant-making process be included in the Proposed Report.

Thank you again for the opportunity to comment on sections of the Proposed Report. I can make myself available if you or any Commissioner would like to discuss. I ask again that the Proposed Report detail all of the Foundation's great work. It would be a disservice to Salem County to ignore over 20 years of vital and life-changing grant making. The readers can decide what needs to be done to CHAPA but unless the story is told fairly and with all of the history, no meaningful conclusions can be reached.

Regards,

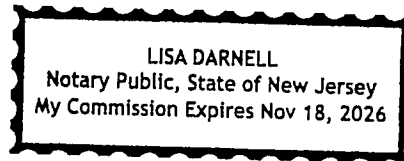
Brenda Goins

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Brenda Goins
Brenda Goins

Sworn and subscribed to :
before me this 17th day :
of Mach, 2023. :

Lisa Darnell
A Notary Public of New Jersey





***State of New Jersey
Commission of Investigation***